THE HON'BLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION No.26755 of 2005

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16.12.2005

Between:

Smt.P.Janaki, W/o.P.V.Hanumantha Rao

And others

... Petitioners

AND

The Commissioner for Appeals – Urban Land Ceiling,
Office of the Chief Commissioner of Land Administration,
Andhra Pradesh, Hyderabad

And others

...Respondents

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WRIT PETITION No.26755 of 2005

ORDER:

The petitioners are legal heirs of late P.V.Hanumantha Rao. The second respondent by an order dated 03.11.2005 passed purportedly under Section 8(4) of the Urban Land (Ceiling & Regulations) Act, 1976 (for short 'the Act') determined the petitioners hold in surplus vacant land in an extent of 1,60,095.40 Sq.meters. Aggrieved by the same, the petitioners preferred an appeal under Section 33 of the Act before the first respondent. They also prayed for stay of operation of the order passed by the second respondent under Section 8(4) of the Act. By the impugned memo dated 06.12.2005 while taking the appeal of the petitioners on file, the first respondent rejected the request for stay. This order is assailed in the writ petition.

The learned Senior Counsel for the petitioners, Sri E.Manohar, submits that the second respondent issued Section 9 statement on 30.11.2005 after the petitioners filed appeal under Section 33 of the Act and notification under Section 10

of the Act was published on 16.11.2005. According to the learned Senior Counsel, the respondents have already sent the notification/declaration under Section 10(3) of the Act for publication. Therefore he would urge that if the orders of the second respondent are not stayed, it would cause prejudice and hardship to the petitioners.

It is well settled that ordinarily the appellate authority must exercise sound discretion while passing orders in the applications for stay of operation of the impugned order of the lower authority. There can be umpteen situations where the remedy of appeal itself would be rendered futile and useless if the order appealed is not stayed. Almost five decades ago, a learned Single Judge of this Court in **Narasimha Raju v. The State of A.P.,** dealing with this aspect observed as under.

> It is the duty of the Court in ordinary cases to make such orders for staying proceedings under the judgment appealed from as will prevent the appeal, if successful, from being nugatory. This position cannot be different so far as appeals under the Motor Vehicles Act are concerned. The authority exercising the revisionary jurisdiction under Sec.64-A should act on the principle of not making the final decision in the revision petition nugatory. Decision on application seeking stay orders must not be arbitrary or capricious. It further follows that reasons should be assigned where the refusal would make the final decision in the main revision barren.

As rightly pointed out by the learned Counsel for the petitioner, the impugned order refusing stay is bereft of any reasons. In view of the same, this Court is of the considered opinion that the first respondent may dispose of the appeal filed by the petitioners within a period of eight weeks from today and till then there shall be *status quo* as on today with regard to further proceedings under the Act.

The Writ Petition, with the above observations and directions, is accordingly disposed of. No costs.

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(**V.V.S.RAO, J**)

December 16, 2005.

NOTE:

Issue operative portion by WIRE at

Party's cost.

(B/o)

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